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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1016/86
T.A. No.

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DATE OF DECISION 29-7-1991

Smt. K.P. Sulochana Applicant (s)

Shri E.X. Jospheph Advocate for the Applicant (s)

Versus

U.O.I. & Ors. Respondent (s)

Shri N.S. Mehta Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. ~~Jug~~ U.C. Srivastava Vice Chairman

The Hon'ble Mr. I.P. Gupta, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(of the Bench delivered by
Hon'ble ~~U~~ Shri U.C. Srivastava)

The applicant was appointed as Stenographer Grade-D on adhoc basis in the Regional-Evaluation Office, Programme Evaluation Organisation (Planning Commission), Jaipur for a period not exceeding six months, sponsored by the Employment Exchange. Her appointment letters indicate that it was a temporary appointment for a period not exceeding six months and she could be transferred anywhere in India or outside and conditions of service will be governed by the relevant rules and orders in force from time to time.

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The applicant joined the service at Jaipur on 09.02.1981 and continued to hold the same without any break except for the period from 20.01.1986, when she proceeded on Maternity Leave. Her appointment was extended from time to time without any break in her service and she had been granted leave like other employees.

The applicant applied for 3 months Maternity Leave from January 1986 supported by a representation on 18.11.1985, i.e. two months prior to the date when she was to proceed on Maternity Leave, so that, the authorities could give her the permission and issue order in advance.

The applicant proceeded on Maternity Leave from 20.01.1986 and she extended her leave on Medical grounds on 02.06.1986. She applied for extension upto 31.07.1986 along with her medical certificate. On 02.08.1986, she again applied for extension of leave from 01.08.1986 to 30.09.1986. She submitted a representation to the Chairman of the Planning Commission for regularising her services^{is} as she continued to serve for a period of 5 years without any break.

The Regional Evaluation Officer, Jaipur sent a letter to the Under Secretary, Programme Evaluation Organisation, stating that in view

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of the instructions laid down in the Department of Personnel & Training O.M. dated 16.09.1985 forwarded under Planning Commission's Memo dated 18.09.1985 stating that the adhoc employees are not governed by the CCS(Leave) Rules 1972 and hence Maternity Leave was not granted to the applicant and her representation was forwarded to the Headquarters office. On 15.05.1986, again she made a representation. In the meantime, the Staff Selection Commission had announced the holding of the Stenographers Examination on 16.08.1986. Her application was also forwarded and the Admission Certificate was duly issued by the Staff Selection Commission(SSC), but she was found ineligible for the benefits admissible to the departmental candidates as she had not rendered 3 years continuous service in the post. In fact, she had served for about 5 years and she was surprised to see the cancellation of her admission certificate in this way.

A Supplementary Special Qualifying Examination(SSQE) regularising appointment of adhoc stenographers was subsequently held and the applicant was also to submit her application in a prescribed proforma. The applicant submitted her application in the prescribed proforma for the said examination. But the applicant was informed by letter No.REO(JPR)/L-66/81 dated 23.09.1986 that her application

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for the SSQE was returned as her services had been terminated w.e.f. the afternoon of 08.08.86. The applicant submitted her representation stating that her case may be reconsidered taking into consideration the fact and circumstances under which she had proceeded on Maternity Leave and later sought for extension on medical grounds. In the written reply filed by the respondents, it has been stated that the applicant was not granted Maternity Leave but allowed Casual Leave for 12 days from 20.01.86 to 04.02.1986 initially when she was absent for duty upto 08.08.1986.

In view of the OM dated 24.07.1986 regarding grant of leave to adhoc employees, the period of absence of the applicant from 20.01.1986 to 08.08.1986 was regularised by grant of maternity leave for 90 days from 20.01.1986 to 19.04.1986, as applied for by her, and leave as admissible to her according to entitlement for the remaining period 20.04.86 to 08.08.86. Her services were terminated in accordance with the instruction of the Govt. of India, Department of Personnel and Training and the termination of the service of a Govt. employee was in accordance with the procedure laid down in the Recruitment Rules and not on the ground that she had not reported for duty on 04.02.1986. The applicant was required to submit her medical certificates and that is why she submitted it and leave was granted to her.

The decision of the Principal Bench, Central Administrative Tribunal dated 21.03.1986 in the case of Smt. Neelam Gulati & Ors. Vs. U.O.I. - O.A.No.22/85 directing the Government to hold a Supplementary Special Qualifying Examination for regularising the services of such employees is relevant. The applicant will also get covered by the Directions given by the Tribunal as above.

The applicant was appointed to the post of Stenographer on adhoc basis through the Employment Exchange and the application of the applicant for the examination was returned to her. The Department of Personnel and Training forwarded a revised scheme vide their O.M. dated 12.11.1986 for holding a SSQE Examination on 08.03.1987 for regularising the services of adhoc employees including those whose services have been terminated. The revised scheme was forwarded to the applicant and she had submitted her application for appearing in the Supplementary Special Qualifying Examination and after scrutinising her application, she was found eligible to appear in the Examination and her application was forwarded to the Staff Selection Commission.

The applicants contention is that she should be regularised without undergoing any examination. As she had put on 5 years of service, she should be absorbed.

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The facts make it clear that the applicant had worked on adhoc basis and continued to work for more than four years. Her adhoc appointment was extended from time to time. She started working from 09.02.1981 and worked continuously for a period of about 5 years. Though she had not completed five years service, she had proceeded on Maternity Leave. The applicant was entitled for a particular leave and that is why the leave was granted and the remaining period of absence on duty was also treated as leave period but for which no salary was admissible to her. She was also found to be eligible to appear in the departmental examination. The question of termination arises only if she had appeared in the same and not succeeded. Termination after five years of service as adhoc employee, when the post existed, there was no adverse remarks about functioning of the employee and the results of the exam. for regularisation were awaited ~~and~~ ^{she} would not be consistent with the settled law on such issues. ~~But that question did not arise.~~ ^{she} The order of termination have also nothing to do with the leave which she had taken from time to time and which was also approved. It is not that she failed to qualify in the examination. The termination orders dated 10th September and 17th September, 1986 are quashed. The ~~app~~ applicant shall be allowed to


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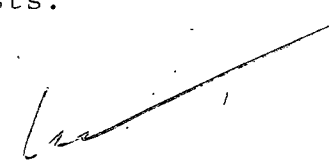
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appear in the examination. Obviously, if she passes in the examination, she should be regularised. If she fails, the Department to take appropriate action including termination of services but in accordance with the Law.

In view of the aforesaid reasons, the applicant shall be reinstated on adhoc appointment and deemed to be in continuous adhoc service but no payment of salary shall be made for the period she had not worked after termination of her services.

There shall be no order as to costs.


(I.P. GUPTA)
MEMBER


(U.C. SRIVASTAV)
VICE CHAIRMAN